

PART 805

ADMISSION OF ATTORNEYS

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805.1 Admission of attorneys. (a) Filing of application papers. Every applicant for admission to practice as an attorney and counselor at law pursuant to subdivision l(a) or l(b) of section 90 of the Judiciary Law, may obtain the standard forms and instructions for that purpose from the clerk of the Appellate Division. Every applicant for admission to practice pursuant to subdivision l(a) of section 90 of the Judiciary Law may obtain such forms and instructions immediately after taking the bar examination, and may file a completed application, consisting of the standard form of questionnaire and the other required papers as directed by the instructions, at any time thereafter, regardless of whether the results of the bar examination have yet been issued. As soon as the applicant shall receive a letter from the State Board of Law Examiners stating that the applicant has passed the bar examination, the applicant shall file that letter with the clerk of the Appellate Division, and if the applicant's questionnaire was verified more than 45 days prior to such filing, the applicant shall also file a supplemental affidavit stating whether there have been any changes in the facts stated therein and setting forth any such changes.

(b) Referral to Committee on Character and Fitness. Every completed application shall be referred for investigation of the applicant's character and fitness to a committee on character and fitness designated by the Appellate Division of the department to which the applicant is eligible for certification by the State Board of Law Examiners after passing the bar examination, or to which the applicant is applying for admission without examination in accordance with the rules of the Court of Appeals for the admission of attorneys and counselors at law.

(AS AMENDED TO MAY 14, 1987)

(c) Quorum for committee action. A majority of the entire committee shall constitute a quorum for the transaction of business by a committee on character and fitness if it consists of less than ten members, and one-fifth of the entire committee, but not less than five members, shall constitute a quorum if it consists of ten or more

members.

(d) Investigation and interview. The committee may itself conduct the required investigation, including an interview of the applicant or it may authorize its chairman or acting chairman to designate one or more of its members to do so and to make a recommendation to the committee. The committee or the member or members thereof conducting the investigation may require the applicant to furnish such additional information or proofs of good character as the committee or such member or members may consider pertinent. The committee may commence the required investigation at any time after the applicant's completed application has been filed, except that the personal interview of an applicant for admission pursuant to subdivision l(a) of section 90 of the Judiciary Law shall not be held until after the applicant has been notified by the State Board of Law Examiners that the applicant has passed the bar examination and has been certified to apply for admission.

(e) Procedure upon recommendation of approval. If the committee shall approve the application following its own investigation, or if it shall accept a recommendation of approval submitted by the member or members conducting an investigation pursuant to designation, the chairman or acting chairman shall certify to the Appellate Division on behalf of the committee that the applicant possesses the requisite character and fitness.

(f) Procedure upon recommendation of disapproval, deferral or committee consideration. If the committee shall fail to approve the application following its own investigation, or following a recommendation submitted by the member or members conducting an investigation pursuant to designation that the application be disapproved or that action thereon be deferred, a hearing on the application shall be held expeditiously before the committee or a subcommittee of at least two members designated by the chairman or acting chairman. Such a hearing shall also be held if the member or members conducting an investigation pursuant to designation shall recommend consideration of the application by the committee and the committee shall fail to approve the application following such consideration.

(g) Notice of hearing; waiver. Unless waived in writing by the applicant, a written notice of hearing of not less than twenty days, specifying the time and place of the hearing, shall be served on the applicant. In addition, the notice of hearing shall inform the applicant of the matters to be inquired into and of the applicant's right to be represented by an attorney, and such information shall also be given to the applicant prior to the hearing if the applicant has waived notice of hearing.

(h) Procedure at hearing. At the hearing, hearsay evidence may be received and considered and adherence to strict rules of evidence shall not be required. The applicant shall be given an opportunity to call and cross-examine witnesses and to challenge, examine and controvert any adverse evidence. Upon timely request, subpoenas for the attendance of witnesses or the production of papers shall be issued to the applicant by

the clerk of the Appellate Division, the subpoena fees and mileage to be paid by the applicant.

(i) Stenographic record or tape recording. A stenographic record or tape recording shall be made of the hearing, and the applicant may obtain a transcript or copy of the recording at the applicant's expense.

(j) Decision or report following hearing. Where the hearing has been conducted by the committee, the committee shall render a decision, and where the hearing has been conducted by a subcommittee, the subcommittee shall render a report, within sixty days after the matter is finally submitted, unless the time is extended by consent of the applicant or order of the Appellate Division. The decision of the committee or the report of the subcommittee, as the case may be, may recommend approval or disapproval of the applicant or deferral of action on the application for a period not to exceed six months.

(k) Transmittal of decision to Appellate Division following hearing conducted by committee. Where the hearing has been conducted by the committee, the committee shall transmit its decision to the Appellate Division, together with the appropriate certificate if it recommends approval of the applicant. If the decision recommends disapproval of the applicant or deferral of action on the application, it shall include a statement of the grounds on which it is based and a copy thereof shall be served on the applicant or the applicant's attorney.

(l) Review by committee following hearing conducted by subcommittee. Where the hearing has been conducted by a subcommittee, the subcommittee's report and the stenographic record or tape recording of the hearing shall be deferred for consideration and review to the committee, which shall render a decision thereon expeditiously. The committee's decision may confirm, reverse or modify the subcommittee's report or direct that a further hearing be held before the same or another subcommittee. If the committee's decision recommends disapproval of the applicant or deferral of action on the application, it shall include a statement of the grounds on which it is based and a copy thereof shall be served on the applicant or the applicant's attorney. The decision shall be transmitted to the Appellate Division, together with the appropriate certificate if it recommends approval of the applicant. The deliberations of the committee shall be confidential and the applicant shall not be entitled to compel disclosure thereof.

(m) Petition to Appellate Division following adverse decision. If the committee's decision is adverse to the applicant, the applicant may, within sixty days after service of a copy thereof, petition the Appellate Division, in accordance with rule 9404 of the Civil Practice Law and Rules, on notice of not less than eight days served on the committee together with any supporting papers, for an order granting the application for admission to practice notwithstanding the committee's decision.

(n) Petition to Appellate Division in case of unreasonable delay. In any case in which it is claimed that the committee has unreasonably delayed action on an application for admission to practice, the applicant may petition the Appellate Division, in

accordance with rule 9404 of the Civil Practice Law and Rules, on notice of not less than eight days served on the committee together with any supporting papers, for an order granting the application notwithstanding the committee's failure to complete action thereon, or for other appropriate relief.

(o) Petition for advance ruling with respect to past conduct.

(1) Any person who is a matriculated student in an approved law school, as an approved law school is defined in the rules of the Court of Appeals for the admission of attorneys and counselors at law, or who has applied for admission to such a law school, and who has previously been (i) convicted of a felony or misdemeanor, or (ii) suspended, removed or dismissed from public office or employment, or (iii) dishonorably discharged from the armed services of the United States, may petition the Appellate Division of the department in which such person resides or is employed full time, or if such person does not reside and is not employed full time in the state, the Appellate Division of the Third Department, for an advance ruling, in accordance with this section, as to whether such conviction, suspension, removal or dismissal from public office or employment, or dishonorable discharge, as the case may be, would operate to disqualify the petitioner, on character grounds, from being admitted to practice as an attorney and counselor at law in this state.

(2) The petition shall include a detailed statement of the facts with respect to the petitioner's conviction, suspension, dismissal or removal from public office or employment, or dishonorable discharge, as the case may be, and of the petitioner's activities subsequent thereto which the petitioner believes bear on character and fitness to practice law.

(3) The petitioner shall also submit a completed and verified questionnaire on the standard form furnished by the committee on character and fitness and affidavits of good moral character from two reputable persons who have known the petitioner for at least one year. In addition, the petitioner shall submit a letter from a person in authority at the approved law school in which the petitioner is a matriculated student or to which the petitioner has applied for admission stating that such law school would retain or accept the petitioner as a student therein, as the case may be, if the petitioner's conviction, suspension, dismissal or removal from public office or employment or dishonorable discharge, as the case may be, would not operate to disqualify the petitioner from being admitted to practice as an attorney and counselor at law in this state.

(4) The petition and other papers submitted by the petitioner shall be referred to the appropriate committee on character and fitness, which shall process and investigate the petition in accordance with the procedures set forth in the preceding sections of this Part. The committee may recommend that a ruling be made either in favor of or against the petitioner, or that no ruling be made, and its recommendation shall be transmitted to the Appellate Division.

(5) A ruling made by the Appellate Division in favor of the petitioner shall determine that the petitioner's prior conviction, suspension, removal or dismissal from public office or employment, or dishonorable discharge, as the case may be, and the acts committed by the petitioner which resulted therein, would not operate to disqualify the petitioner, on character grounds, from being admitted to practice as an attorney and counselor at law in this state. Such a ruling shall have binding force throughout the state with respect to the determination thus made by it. In the event that the Appellate Division should rule against the petitioner or should refuse to make a ruling, its determination shall be without prejudice to the petitioner's right, after passing the bar examination, to apply for a favorable ruling with respect to character and fitness.

(p) Manner of service. Service of any notice or other papers required under any of these rules may be made by mail or in the manner provided for service of a summons. (Amd. eff. 6/24/85.)

805.2 Defense and indemnification of members of committees on character and fitness. Members of the committees on character and fitness in the third judicial department, as volunteers, are expressly authorized to participate in a state-sponsored volunteer program within the meaning of subdivision 1 of section 17 of the Public Officers Law. (Eff. 11/27/78.)

805.3 Admission pro hac vice. (a) Application in this department for admission pro hac vice, pursuant to paragraph 520.9(e)(1) of the rules of the Court of Appeals, to participate in the trial or argument of any particular cause, shall be made to the court in which the action or proceeding is pending.

(b) Application for admission pro hac vice, pursuant to paragraphs 520.9(e), (2) and (3), shall be made only to this court, and shall be made upon a verified petition which shall set forth:

- (1) facts showing compliance with the requirements of the section;
- (2) the nature of the legal services to be performed;
- (3) the courts in which applicant seeks permission to appear; and
- (4) the period for which authorization is sought.

(c) Upon approval of an application, the order shall specify the scope and extent of the authorized legal services, the courts in which applicant may appear and the period of authorization. (Amd. eff. 3/29/82.)

805.4 Licensing of legal consultants. (a) Applications for licenses as legal

consultants; referral to committee on character and fitness.

(1) The committees on character and fitness appointed by this court to investigate the character and fitness of applicants for admission to practice as attorneys and counselors at law in the courts of this State are hereby also authorized to investigate the qualifications and the character and fitness of applicants for licenses to practice as legal consultants pursuant to the Judiciary Law (§ 53, subd. 6) and the rules of the Court of Appeals (22 NYCRR Part 521).

(2) Every applicant for a license to practice as a legal consultant shall complete, verify and file with the clerk of this court the standard form of questionnaire, and shall comply with all the other requirements prescribed for that purpose by this court.

(3) Every application in this department for such a license shall be referred to the committee on character and fitness for the judicial district in which the applicant actually resides at the time of such application, and, unless otherwise ordered by the court, no such license shall be granted without a certificate from such committee that it has found that the applicant possesses the qualifications and the character and fitness required thereof.

(b) Documents, affidavits and other proof required. Every applicant for a license to practice as a legal consultant shall file the following additional papers with his application:

(1) A certificate from the authority having final jurisdiction over professional discipline in the foreign country in which the applicant was admitted to practice, which shall be signed by a responsible official or one of the members of the executive body of such authority and shall be attested under the hand and seal, if any, of the clerk of such authority, and which shall certify:

(i) as to the authority's jurisdiction in such matters;

(ii) as to the applicant's admission to practice in such foreign country and the date thereof, and as to his good standing as an attorney or counselor at law or the equivalent therein; and

(iii) as to whether any charge or complaint has ever been filed against the applicant with such authority, and, if so, the substance of each such charge or complaint and the disposition thereof.

(2) A letter of recommendation from one of the members of the executive body of such authority or from one of the judges of the highest law court or court of general original jurisdiction of such foreign country, certifying to the applicant's professional qualifications, together with a certificate under the hand and seal, if any, of

the clerk of such authority or of such court, as the case may be, attesting to the office held by the person signing the letter and the genuineness of his signature.

(3) Affidavits as to the applicant's good moral character and fitness from three reputable persons residing in this State and not related to the applicant, one of whom shall be a practicing New York attorney.

(4) Affidavits from two attorneys or counselors at law or the equivalent admitted in and practicing in such foreign country, stating the nature and extent of their acquaintance with the applicant and their personal knowledge as to the nature, character and extent of the applicant's practice, and as to the applicant's good standing, as an attorney or counselor at law or the equivalent in such foreign country, and the duration and continuity of such practice.

(5) Such additional evidence as the applicant may see fit to submit with respect to his educational and professional qualifications and his good moral character and fitness.

(6) A duly authenticated English translation of every paper submitted by the applicant which is not in English.

(7) A duly acknowledged instrument designating the clerk of this court the applicant's agent for service of process as provided in subparagraph 521.4(a)(2)(iii) of the rules of the Court of Appeals (22 NYCRR 521.4[a][2][iii]).

(c) College and law school certificates. A certificate shall be submitted from each college and law school attended by the applicant, setting forth the information required by forms which shall be provided to the applicant for that purpose.

(d) Exceptional situations. In the event that the applicant is unable to comply strictly with any of the foregoing requirements, the applicant shall set forth the reasons for such inability in an affidavit, together with a statement showing in detail the efforts made to fulfill such requirements.

(e) Authority of committee on character and fitness to require additional proof. A committee on character and fitness may in any case require the applicant to submit such additional proof or information as it may deem appropriate and may also require the applicant to submit a report of the National Conference of Bar Examiners with respect to his character and qualifications.

(f) Undertaking. Prior to taking custody of any money, securities (other than unendorsed securities in registered form), negotiable instruments, bullion, precious stones or other valuables, in the course of his practice as a legal consultant, for or on behalf of any client domiciled or residing in the United States, every person licensed to practice as a legal consultant shall obtain, and shall maintain in effect for the duration of such custody, an undertaking issued by a duly authorized surety company, and

approved by a justice of this court, to assure the faithful and fair discharge of his duties and obligations arising from such custody. The undertaking shall be in an amount not less than the amount of any such money, or the fair market value of any such property other than money, of which the legal consultant shall have custody, except that this court may in any case in its discretion for good cause direct that such undertaking shall be in a greater or lesser amount. The undertaking or a duplicate original thereof shall be promptly filed by the legal consultant with the clerk of this court.

(g) Disciplinary procedure. (1) Disciplinary proceedings against any legal consultant shall be initiated and conducted in the same manner as prescribed by law for disciplinary proceedings against attorneys.

(2) Any committee authorized by this court to conduct preliminary investigations of charges of professional misconduct by attorneys shall have authority to conduct preliminary investigations of charges of professional misconduct or unauthorized activities on the part of any licensed legal consultant in the same manner as in investigations relating to attorneys.

(h) Filing. Every application in this department for a license as a legal consultant, together with all the papers submitted thereon, shall upon its final disposition be filed in the office of the clerk of this court. (Eff. 11/27/78.)

805.5 Activities of eligible law students and law school graduates authorized by sections 478 and 484 of the Judiciary Law. (a) Any officer or agency of the state, or of a subdivision thereof, or any legal aid organization whose principal office is located in this department, may make application to the presiding justice of this court for an order authorizing the employment or utilization of law students who have completed at least two semesters of law school and eligible law school graduates as law interns to render and perform legal services, to the extent set forth in paragraph (b) hereof, which the officer, agency or organization making the application is authorized to perform. The application shall set forth the names and addresses of the persons to be appointed and facts showing their eligibility for appointment, together with applicant's certification that they are of good character and competent legal ability.

(b) Authorized activities. Law students who have completed at least two semesters of law school and law school graduates appointed as law interns are authorized to engage in the following activities:

(1) In the Appellate Division, Third Department, to prepare briefs and memorandums of law and, upon prior approval of the court and when under immediate supervision of a supervising attorney, to argue appeals and motions in both civil and criminal actions and proceedings.

(2) In criminal matters, in superior courts, under general supervision of a

supervising attorney, to render legal services at arraignments, bail applications, pleas, sentencings, preliminary hearings and post-conviction proceedings, including appeals.

(3) In criminal matters, in inferior courts, under general supervision, to render legal services at arraignments, pleas, sentencings, preliminary hearings, post-conviction proceedings and at non-jury trials in cases involving misdemeanors and lesser offenses; and, when under immediate supervision of a supervising attorney, at jury trials in cases involving misdemeanors.

(4) In family court, under general supervision, to render legal services on motions and in uncontested proceedings, and in contested matters when under immediate supervision of a supervising attorney.

(5) In civil actions and proceedings in or before any court or administrative agency, under general supervision, to render legal services in motions and uncontested matters, and, under immediate supervision, in contested civil matters. Appearances before federal courts and state and federal administrative agencies shall be subject to the rules and regulations of the particular court or agency involved.

(c) Requirements and limitations. A law intern may appear in the courts and administrative agencies specified in paragraph (b) above if the person on whose behalf the intern is appearing and the supervising attorney have indicated in writing their consent to the appearance. The consents referred to shall be filed with and brought to the attention of the presiding officer of the court or administrative agency. Pleadings, legal documents, briefs and memorandums shall be indorsed by the supervising attorney and may contain the name of the law intern who participated in their preparation.

(d) Limitations on legal aid programs and organizations. Law students who have completed at least two semesters of law school and law school graduates engaged as law interns in a legal aid organization or legal services program whose principal office is located in this department shall be authorized to render legal services to and represent only persons who are financially unable to pay for legal services and are eligible to qualify for free legal services in accordance with the standards and guidelines of the organization or program in which they are engaged. They may not act in bankruptcy proceedings, libel and slander cases, decedent estate matters or contingent fee matters, except where three private attorneys have rejected the case; but, subject to the scope of the purposes of the organization or program in which they are engaged, they may render assistance to indigent persons in any matter in which a party does not have the right to assignment of counsel and to indigent inmates of correctional institutions or other persons who request assistance in preparing applications for post-conviction relief. A law intern shall neither ask for nor receive any compensation or remuneration for services from the party on whose behalf the services are rendered.

(e) Supervision. A supervising attorney shall be the head of the department, agency or legal aid organization making the application, or his or her designee, and shall have at least two years of actual practice in this state. The supervising attorney shall

assume personal professional responsibility for any work undertaken by a law intern and shall supervise the preparation of the intern's work. Immediate supervision of a law intern shall mean that the supervising attorney shall be personally present throughout the proceedings.

(f) Length of appointment. A law student who has completed at least two semesters of law school or law school graduate may be employed to render legal services, as authorized herein, until he or she shall have been admitted to the bar or notified that he or she failed the New York State bar examination which was given immediately following graduation from law school. A person who shall fail to pass that examination but shall apply to take the next available New York State bar examination may be redesignated upon application to the presiding justice. The length of the period of service shall be specified in the order of appointment. (Amd. eff. 7/6/93.)

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